

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 HENRY C. ROSENAU,

14 Defendant.

CASE NO. CR06-157MJP

ORDER ON DISCOVERY
REGARDING MLAT MATERIALS

15
16 This matter comes before the Court on Defendant Henry Rosenau's motion for
17 preservation of evidence and to compel discovery. (Dkt. No. 102.)

18 In his motion, Defendant Rosenau asserted that the Government's refusal to provide
19 Defense Counsel with "any and all MLAT materials . . . has impeded Defense Counsel's ability
20 to fully prepare a defense under the Speedy Trial Act." (*Id.* at 2.) Defendant's motion expressly
21 stated "[t]here is no claim that the requested materials would be discoverable pursuant to Jencks,
22 Brady or Giglio matters." (*Id.* at 2, n.1.) The Government responded by arguing that, except as
23 Rule 16(a)(1) provides, Rule 16(a)(2) protects it from turning over most internal government
24 documents made in connection with the investigation or prosecution of the case. (Fed. R. Crim.

1 P. 16(a)(1-2); Dkt. No. 116 at 2.) It also argued that both the U.S. and Canadian governments
2 “view MLAT requests as confidential and protected sovereign speech and not open to individual
3 claims or causes of action.” (Id.)

4 After reviewing the motion and the Government’s response, the Court determined that,
5 while the Government has a valid interest in protecting internal legal documents, including the
6 substance of negotiations with the Canadian government, “certain elements of the MLAT
7 materials, including the dates of communications with the Canadian government, may be
8 relevant for the Defendant’s ability to prepare a defense concerning the Speedy Trial Act.” (Dkt.
9 No. 126 at 1-2.) The Court therefore ordered the Government to turn over MLAT materials to the
10 Court for in camera review by April 24, 2012. (Id. at 2.)

11 Pursuant to the Court’s order, the Government turned over materials related to its MLAT
12 request to the Court for in camera review on April 24, 2012. The Court reviewed these materials,
13 and on April 26, 2012, ordered the government to prepare a revised set of materials redacting
14 “the specific advice and/or information received or sent,” but leaving “the date each MLAT-
15 related communication was initiated, the sender and recipient of each communication, and
16 enough material to identify the subject of each communication and that each communication
17 related to Mr. Rosenau.” (Dkt. No. 136 at 1-2.) The Government submitted these redacted
18 materials to the Court for in camera review on the afternoon of April 27, 2012.

19 After reviewing these materials, the Court believes that the Government’s most recent
20 submission satisfies its Constitutional duties to turn over information material to the Defendant’s
21 speedy trial argument, while respecting the Government’s interest in not providing internal legal
22 documents to the defense.

1 The Court hereby ORDERS that the Government turn over the latest redacted version of
2 the MLAT materials to the Defendant by 12:00 p.m. on Monday, April 30, 2012.

3 The clerk is ordered to provide copies of this order to all counsel.

4 Dated this 27th day of April, 2012.

5
6 

7
8 Marsha J. Pechman
United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24